

**TITLE 13  
ELECTIONS**

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## **TITLE 13 ELECTIONS**

### 13.01      PURPOSE & DEFINITIONS

#### 13.01.01      Purpose

- (a) On October 28, 1994, Nisqually Constitutional amendments were approved which govern elections of officers. Article IV, Sections 1 and 5 of the amended Nisqually Constitution authorized the Nisqually Tribal Council to adopt rules and an Election Ordinance to govern the election of Tribal Council officers. Section 13.02 of the Nisqually Tribal Code implements those Sections of the amended Nisqually Constitution.
- (b) The 1994 Nisqually Constitutional amendments delegated authority to the Nisqually Tribal Council to adopt ordinances under Article VI, Section 1. The Tribal Council has determined that Community participation in Tribal elections is essential to the democratic process, and Section 13.02 of the Nisqually Tribal Code, as amended, is intended to ensure that Nisqually Tribal elections are conducted in a manner that is consistent, fair, efficient and reflects the needs of the Nisqually People. Section 13.02 is intended to establish rules for the election of the Tribal Council and any electable Committee.
- (c) By General Council Resolution No. 1-1991, the General Council delegated to the Nisqually Tribal Council the authority to establish a procedure for the election of Fish Commissioners. Section 13.02 of the Nisqually Tribal Code implements Resolution No. 1-1991 and is also intended to establish rules for Fish Commission elections.
- (d) Although Article IV, Section 2 of the Nisqually Constitution makes absentee voting discretionary, the Tribal Council, in consultation with the Nisqually People, has determined that the Nisqually tribal member right to vote guaranteed in Article VII, Section 1 of the Nisqually Constitution is sacred; and, whether cast in person or via absentee ballot, that right shall be carried out in good faith.
- (e) This Election Ordinance is intended to accomplish fair and efficient democratic elections and voting processes for the Nisqually People and their government.

### **HISTORICAL AND STATUTORY NOTES**

#### **ANNOTATIONS**

This Title was originally enacted by Tribal Council Resolution 124-1994, amended by Tribal Council Resolution 14-2007 dated February 13, 2007, and since amended by Tribal Council Resolution \_\_-2015 dated \_\_\_\_\_, 2015.

#### 13.01.02      Definitions

- (a) “Absentee Voter” shall mean an Eligible Voter who desires to vote by absentee ballot for the Primary or General Election.

- (b) “Candidate” shall mean an enrolled member seeking election to any open Tribal Council, Fish Commission or electable Committee position, who meets all of the qualifications for candidacy set forth in this Ordinance.
- (c) “Community” or “Tribe” shall mean the Nisqually Indian Tribe, a federally recognized Indian tribal government.
- (d) “Days” shall mean calendar days unless business days is specified. The number of “days” shall be computed by (i) excluding the day of the event that triggers the period, (ii) counting every day, including intermediate Saturdays, Sundays and legal holidays, and (iii) including the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until 5:00 PM on the next day that is not a Saturday, Sunday or legal holiday. The number of “business days” shall be computed by (i) excluding the day of the event that triggers the period, (ii) counting every day, excluding intermediate Saturdays, Sundays and legal holidays, and (iii) including the last day of the period, but if the last day is a Saturday, Sunday or legal holiday, the period continues to run until 5:00 PM on the next day that is not a Saturday, Sunday or legal holiday.
- (e) “Electable Committee” or “elected Committee” shall be any Committee that the General Council creates and dictates shall be filled through the election process.
- (f) “Election date” or “election day” shall mean the defined date of the Primary Election or General Election.
- (g) “Election process” shall mean that process compromised of a Nominations Meeting, Primary Election and General Election, as set forth in Section 13.02 below, and in accordance with Article IV, Section 1 of the Nisqually Constitution.
- (h) “Eligible Voter” or “qualified voter” shall mean any tribal member who is or will be at least eighteen (18) years old on or before an election date, which definitions shall be construed in keeping with Section 13.02.02(a).
- (i) “Enrolled member,” “tribal member” or “member” shall mean an enrolled member of the Nisqually Indian Tribe. “Nisqually People” shall mean all such enrolled members.
- (j) “General Election” shall mean the election for the two candidates for any open Tribal Council or electable Committee position who received the most votes during the Primary Election, which shall occur on the first Saturday of May.
- (k) “General Council Nominations Meeting” shall occur on the first Saturday of February at which nominations for any open Tribal Council, Fish Commission or electable Committee position are made.
- (l) “Ordinance” or “Title” shall mean this Title 13 of the Nisqually Tribal Code.

- (m) “Person” shall mean a tribal member who is at least eighteen (18) years old.
- (n) “Primary Election” shall mean the election for any candidates for any open Tribal Council, Fish Commission or electable Committee positions, which shall occur on the second Saturday of March.
- (o) “Majority” shall mean the highest number of votes for any one candidate.
- (p) “Tribal Center” shall mean the Nisqually Indian Tribal Office on the Nisqually Indian Reservation, at 4820 Nisqually Dr. SE, Olympia, Washington.
- (q) “Tribal Court” shall mean the Nisqually Tribal Court.

## 13.02            ELECTION OF TRIBAL COUNCIL, FISH COMMISSION, ELECTED COMMITTEE

### 13.02.01       Scope

This Title 13 shall exclusively govern the election of Tribal Council officers after the General Council meeting of January 1995, in accordance with Article IV, Sections 1 and 5 of the Nisqually Constitution. This Title 13 also shall exclusively govern the election of Fish Commission and electable Committee offices in accordance herewith.

### 13.02.02       Eligible Voters

- (a) All Tribal members who are or will be at least eighteen (18) years old on or before the Primary Election date shall be eligible to vote in the Primary Election. All Tribal members who are or will be at least eighteen (18) years old on or before the General Election date shall be eligible to vote in the General Election.
- (b) The Enrollment Department shall prepare a confidential list of Eligible Voters and make that list available to the Election Committee by no later than the General Council Nominations Meeting date or otherwise within five (5) business days of the Election Committee Secretary’s written request. The Enrollment Department and Election Committee shall maintain the list of Eligible Voters in strict confidence. As of the Primary Election date, the list of Eligible Voters shall include all Tribal members who are or will be at least eighteen (18) years old on or before the Primary Election. As of the General Election date, the list of Eligible Voters shall include all Tribal members who are or will be at least eighteen (18) years old on or before the General Election. The Enrollment Department shall at all times keep the list of Eligible Voters current. The Enrollment Department shall be open while the polls are open and otherwise as necessary on the days of the Primary and General Elections in order to assist with the identification or confirmation of Eligible Voters. These obligations are mandatory upon the Enrollment Department.

13.02.03      Election Committee

- (a) The Tribal Council shall appoint an Election Committee of five (5) voting Tribal members at least sixty (60) days before the General Council Nominations Meeting on the first Saturday of February.
- (b) Any Election Committee member who resigns, is removed, or accepts a nomination as a candidate for an open Tribal Council, Fish Commission or electable Committee position, shall automatically vacate their position on the Election Committee and be immediately replaced by the Tribal Council.
- (c) Members of the Election Committee shall be compensated for their duties at a rate approved by the Tribal Council.
- (d) The Election Committee shall be a “Special Purpose Committee” as defined by Section 2.01.050 of the Nisqually Tribal Code and shall dissolve automatically upon certification of final General Election results or any final decision thereon.
- (e) Prior to the General Council Nominations Meeting, the Tribal Council shall hire an outside Election Attorney to assist the Election Committee with any election contests or legal matter arising from the Primary Election or General Election. No attorney presently or previously employed in the Nisqually Office of Tribal Attorney may serve as Election Attorney.

13.02.04      Election Committee Authority and Responsibility

- (a) To promptly publish and post notice of all elections governed by this Ordinance;
- (b) To prepare ballots for all elections governed by this Ordinance;
- (c) To obtain the list of Eligible Voters before the polls open and maintain that list in confidence while the polls are open and otherwise as needed to implement this Ordinance;
- (d) To supervise activity at the polls;
- (e) To verify the eligibility of every member who wishes to vote and to distribute one ballot to each Eligible Voter at the polls;
- (f) To keep a record of persons who received ballots and of the number of ballots distributed and cast at an election;
- (g) To resolve in good faith any voting, balloting or election dispute that may arise under this Ordinance;

- (h) To count and validate ballots and record the number of votes cast for each candidate after the polls are closed;
- (i) To certify the results of the election in writing and to notify the General Council on the first business day after the election by immediately posting the certified results at the Tribal Center and at other public places on the Nisqually Indian Reservation, and sending written notice to the Tribal Council; and
- (j) To recommend to the Tribal Council any supplemental rules or changes in this Ordinance that the Election Committee believes are necessary to achieve the purposes of this Ordinance.

#### 13.02.05 Election Committee Oath

Before taking office, Election Committee members shall stand before the Tribal Council and swear an oath that they will carry out their duties faithfully; that they will not let their preferences in an election influence their actions as Committee members; and, that they will not engage in, sanction or permit to go unchallenged, conduct which could prevent a fair election.

#### 13.02.06 Nomination Procedures

- (a) Nominations for open Tribal Council positions pursuant to Article IV, Section 4 of the Nisqually Constitution shall be made at the General Council Nominations Meeting on the first Saturday of February. Nominations for open Fish Commission and electable Committee positions shall also be made at that General Council Nominations Meeting. The Tribal Council interprets the Nisqually Constitution to not require any quorum of General Council for purpose of the Nominations Meeting.
- (b) Per Article IV, Section 1 of the Nisqually Constitution, any enrolled Tribal member who has or will have reached the age of twenty-one (21) years old on or before the General Council Nominations Meeting date shall be eligible for nomination to the offices of Chairman, Vice-Chairman, Secretary, Treasurer and Fifth Council Member; and any enrolled Tribal member who has or will have reached the age of eighteen (18) years old on or before the General Council Nominations Meeting date shall be eligible for nomination to the offices of Sixth and Seventh Council Member. Any Tribal member who has or will have reached the age of eighteen (18) years old on or before the General Council Nominations Meeting date shall also be eligible for nomination to any open Fish Commission and electable Committee position, provided, no Tribal member can accept a nomination for more than one (1) open Tribal Council, Fish Commission or electable Committee position.
- (c) No person may be nominated unless that person is present in person to accept a nomination for an open Tribal Council, Fish Commission or electable Committee position at the General Council Nominations Meeting. No member of the Election Committee is eligible to be nominated for an open Tribal Council, Fish Commission or electable Committee

position at the General Council Nominations Meeting unless that person vacates his or her Election Committee position at the General Council Nominations Meeting in order to simultaneously accept the nomination for an open position at that meeting. No person shall nominate himself or herself for any open Tribal Council, Fish Commission or electable Committee position.

- (d) All nominations must be made by an Eligible Voter and seconded by another Eligible Voter, both of which shall be made via microphone from the General Council's podium at the General Council Nominations Meeting. No person nominated for any open Tribal Council, Fish Commission or electable Committee position shall second his or her own nomination. Any person who is nominated in accordance with this Section shall either accept or decline the nomination from the General Council's podium during the General Council Nominations Meeting in order to become a candidate for an open Tribal Council, Fish Commission or electable Committee position. All nominations shall be documented by the Election Committee.
- (e) Within five (5) business days of the General Council Nominations Meeting, the Election Committee shall (1) certify in writing that all nominees are eligible for nomination in accordance with Article IV, Section 1 of the Nisqually Constitution and Sections 13.02.06(b) and 13.02.06(c) above, and (2) post a resulting slate of eligible candidates at the Tribal Center and at other public places on the Nisqually Indian Reservation.
- (f) Any candidate may withdraw his or her candidacy for any open Tribal Council, Fish Commission or electable Committee position by filing a written and notarized notice of withdrawal with the Election Committee at any time prior to an election date.

#### 13.02.07 Primary Election

- (a) A Primary Election involving all candidates for any open Tribal Council, Fish Commission or electable Committee position shall occur on the second Saturday of March. The Tribal Council interprets the Nisqually Constitution to require a quorum of the General Council for the General Council business meeting on the second Saturday of March, but to not require such quorum for purpose of the Primary Election that day.
- (b) Polls for the Primary Election shall be open for seven hours.
- (c) Balloting in the Primary Election shall take place at the Tribal Center. The Primary Election shall be monitored at all times by all five (5) Election Committee members.

- (g) For each open Tribal Council or electable Committee position, each of the two (2) candidates who receive the most votes in the Primary Election will advance to the General Election.
- (h) If there is only one candidate for an open Tribal Council or electable Committee position at the time of the Primary Election, that candidate will be declared the winner upon the completion of the Primary Election and shall be entitled to fill that position upon completion of the General Election in keeping with Section 13.02.15.
- (i) If there are only two candidates for an open Tribal Council or electable Committee position at the time of the Primary Election, each of those candidates will not be subject to voting in the Primary Election and will instead advance to the General Election.
- (j) To accomplish a slate of five (5) open Fish Commission positions, the five (5) candidates who receive the most votes in the Primary Election shall be declared the winners and shall be entitled to fill those positions in keeping with Section 13.02.15. **There shall be no General Election for any Fish Commission positions.**

13.02.08      General Election

- (a) A General Election involving the two candidates for any open Tribal Council or electable Committee position who received the most votes during the Primary Election shall occur on the first Saturday of May. The Tribal Council interprets the Nisqually Constitution to not require any quorum of General Council for purpose of the General Election.
- (b) Polls for the General Election shall be open for seven hours.
- (c) Balloting in the General Election shall take place at the Tribal Center. The General Election shall be monitored at all times by all five (5) Election Committee members.
- (d) For each open Tribal Council or electable Committee position, the candidate who receives a majority of the votes during the General Election shall be declared the winner and shall be entitled to fill that position in keeping with Section 13.02.15.
- (e) No person may be elected to more than one (1) open Tribal Council, Fish Commission or electable Committee position. Any person who, upon computation of the votes for the General Election, has been elected to more than one (1) such position shall, within two (2) days after the certified General Election election results being posted in accordance with Section 13.02.15 below, notify the Tribal Council and Election Committee, in writing which position they accept and which position(s) they decline. Any failure to do so will cause that person to forfeit any or all positions to which they were elected in the General Election.

For any Tribal Council, Fish Commission or electable Committee position that such person declines, or in the event of such forfeiture for failure to comply with this Section



13.02.08(e), the General Council shall appoint somebody to fill that vacant position, at a duly called General Council meeting; as to a Tribal Council position, that shall be in accordance with Article V, Section 1 of the Nisqually Constitution. The Tribal Council interprets the Nisqually Constitution to require a quorum of the General Council in order to fill any such Tribal Council position vacancy.

For purpose of filling any vacancy, the Tribal Chairman shall call a General Council meeting to be held within thirty (30) days of the General Election date.

#### 13.02.09 Notice of Elections

- (a) A Notice of Election shall be printed and issued by the Election Committee for every election.
- (b) The Notice of Election shall be mailed to the last known address of each Eligible Voter, and posted at the Tribal Center and at other public places on the Nisqually Indian Reservation, not less than fourteen (14) days prior to the election date.
- (c) The Notice of Election for the Primary Election shall specify (1) each Tribal Council, Fish Commission or electable Committee position to be filled and for each such position, any candidate who is eligible to fill that position pursuant to Section 13.02.06, and (2) the date, hours and place of the Primary Election.
- (d) The Notice of Election for the General Election shall specify (1) each Tribal Council or electable Committee position to be filled and for each such position, the candidate or candidates who received the most votes in the Primary Election pursuant to Section 13.02.07, and (2) the date, hours and place of the General Election.

#### 13.02.10 Scheduling and Places

- (a) In case emergency circumstances require that the General Council Nominations Meeting, Primary Election or General Election be postponed, the Election Committee, in consultation with the Tribal Council, shall reschedule the postponed meeting or election, as expeditiously as practically possible. The rescheduled election shall comply with the normal election procedures to the extent practically possible.
- (b) Balloting in all elections shall take place at the Tribal Center, unless otherwise specified in the Notice of Election.

#### 13.02.11 Regulations

- (a) Voting in all elections governed by this Ordinance shall be by secret, written ballot. Eligible Voters shall (1) present photo identification upon any request of the Election Committee monitors; (2) sign their name next to their enrollment number signifying that they have received one (1) ballot; (3) enter their vote on the ballot in secret; (4) fold the ballot in half; and, (5) deposit the ballot in a locked ballot box.

- (b) The Election Committee shall maintain a Voting List that identifies each and every ballot issued to an in-person voter, including at least: (1) each voter's name and roll number; and (2) confirmation of that person's photo identification, if requested.
- (c) No person shall campaign or otherwise attempt to influence or interfere with voters or shall loiter on the Tribal Center grounds within three hundred (300) feet of the polling place during hours when the polls are open.
- (d) Voters who are unable to mark a ballot without assistance because of special circumstances such as physical disability or illiteracy may be assisted in voting, in the manner outlined in Section 13.02.11(a) above, by a person of the voter's choice.
- (e) Consumption of alcoholic beverages, drugs or other intoxicants at the polls or on Tribal Center grounds is prohibited.

#### 13.02.12      Ballots

- (a) Ballots shall contain the list of the candidates with a space next to each name for the voter to place a checkmark. The voter shall place a checkmark by no more than one (1) candidate for each open position. Ballots containing more than one (1) checkmark for each open position shall be void only as to that portion of the ballot. Write-in votes for any open position are not valid and will not be counted. The voter shall place his or her own ballot in the locked ballot box.
- (b) At the close of the polls, all unused official ballots shall be somehow marked to indicate they were unused and kept for documentation, by the Election Committee. The Election Committee shall open the locked ballot box and in turn all ballots, and compute the vote. Ballots shall be counted a minimum of three (3) times. The totals must agree at least twice to be valid. After the final count, ballots shall be secured in a locked container and may be destroyed after one (1) year. Tribal Members may be present during the opening of the locked ballot box and counting of the ballots, provided they do not interfere. A Nisqually police officer shall be present while the locked ballot box is opened and while the ballots are being counted by the Election Committee.

#### 13.02.13      Absentee Ballots

- (a) Absentee voting is allowed for all elections governed by this Ordinance, as contemplated by Article IV, Section 2 of the Nisqually Constitution. An Eligible Voter may cast an absentee ballot for the Primary Election and/or General Election.
- (b) An Absentee Voter must obtain a single absentee ballot from the Election Committee by written and originally absentee ballot signed request form; and must present said request to the Election Committee in person or by mail, by no later than twenty (20) days before an election date. Nobody other than the Absentee Voter shall be allowed to present said request. Only one absentee ballot will be sent to a requesting Absentee Voter, in which

case that voter shall no longer be eligible to vote in person per Section 13.02.12(a). Any person who properly and timely requests an absentee ballot for the Primary Election will also be provided an absentee ballot for the General Election without that person needing to take any further action.

- (c) The Election Committee shall maintain an Absentee Ballot List that identifies each and every absentee ballot issued to a Absentee Voter, including (1) each Absentee Voter's name, address and roll number; (2) the identification number for the single absentee ballot issued to the Absentee Voter; (3) the date that absentee ballot was issued to the Absentee Voter; (4) the date the outer envelope containing that absentee ballot was postmarked by the U.S. Mail, if applicable; and, (5) the date and time that absentee ballot was received from that Absentee Voter via the U.S. Mail Post Office Box contemplated by Section 13.02.13(g) below. The Absentee Ballot List shall be maintained along with each and every written and originally signed absentee ballot request, as contemplated by Section 13.02.13(b) immediately above.
- (d) The Election Committee shall print each and every absentee ballot on some form of paper that prevents unauthorized duplication and shall contain an identification number.
- (e) The Election Committee shall mail an original absentee ballot to the Absentee Voter at his or her address identified on the absentee ballot request form, via certified U.S. Mail, return receipt requested, along with an unmarked, smaller envelope, and a preaddressed, prestamped, larger, outer envelope, and a set of printed absentee voting instructions. Said printed instructions shall indicate to the Absentee Voter in the following or otherwise understandable terms that:
  - (i) The Absentee Voter shall be provided only one absentee ballot;
  - (ii) The Absentee Voter must vote for no more than one (1) candidate for each position;
  - (iii) The Absentee Voter must place the folded original absentee ballot in the provided unmarked, smaller envelope, seal and sign that envelope, and insert that ballot and smaller envelope, along with a copy of some form of photo identification, into the preaddressed, prestamped, larger, outer envelope;
  - (iv) The Absentee Voter must mark the outside of the outer envelope with the Absentee Voter's name and address, and send it via U.S. Mail to the Post Office Box address specified in those printed instructions, for receipt by the Election Committee by no later than the election date;
  - (v) Absentee ballots will only be accepted via U.S. Mail and not in person, and will not be counted unless received by no later than the election date.

The absentee voting requirements set forth in this Section 13.02.13 shall be strictly enforced by the Election Committee.

- (f) No Absentee Voter shall be provided more than one absentee ballot. Any Absentee Voter who receives and signs for his or her absentee ballot via certified U.S. Mail, return receipt requested, shall not be eligible to receive another absentee ballot under any circumstance. As the lone exception to the absentee ballot mail-in requirements in this Section 13.02.13, any Absentee Voter who properly and timely requests an absentee ballot and can demonstrate to the Election Committee upon a preponderance of evidence that he or she did not receive his or her absentee ballot via certified U.S. Mail, may, in the absolute and non-appealable discretion of the Election Committee, be provided a ballot to be cast in person on the election date; a second absentee ballot will not be afforded to that person. In that instance, both the Absentee Ballot List contemplated by Section 13.02.13(c) and the Voting List contemplated by Section 13.02.11(b) will be updated accordingly.
- (g) An Absentee Voter must cause his or her original ballot to be **received** by the Election Committee at the Post Office Box address specified in those printed instructions by no later than the election date, or that person's outer envelope shall not be opened and that person's ballot shall not be counted by the Election Committee. At least two (2) members of the Election Committee, in the company of a Nisqually police officer, shall retrieve any absentee ballots from the physical Post Office Box. Any such unopened outer envelope shall be kept for documentation by the Election Committee.
- (h) Upon the timely receipt of any absentee ballot, the Election Committee shall: (1) observe the name of the sender on the outer envelope; (2) mark the original ballot received on the Absentee Ballot List; (3) remove the copied photo identification from the outer envelope to confirm the Absentee Voter's identification; (4) remove the inner envelope from the outer envelope and verify the Absentee Voter's original signature thereon by comparing it to the original signature on the absentee ballot request form contemplated by Section 13.02.13(b) and the return receipt contemplated by Section 13.02.13(e) above; and (5) if and only if those signatures match and the absentee ballot otherwise conforms to the requirements set forth on this Section 13.02.13(e), place the absentee ballot into the ballot box. Any absentee ballot that does not satisfy the strict requirements set forth in Section 13.02.13(e) above shall not be placed into the ballot box or counted by the Election Committee. Any such disqualified absentee ballot shall be kept for documentation by the Election Committee.

#### 13.02.14      Runoff Elections

If voting results in a tie, the Election Committee shall schedule a runoff election to take place within fourteen (14) days after the Primary or General Election date. If the Election Committee determines that a challenge under Section 13.03.01 below is valid, the Election Committee shall schedule a new election to take place within thirty (30) days after that determination. The rescheduled election shall comply with the normal election procedures to the extent practically possible. In the case of a tie, a runoff election shall be held only for those candidates whose votes were tied.

### 13.02.15 Certification of Elections and Inauguration

The certified results of the election shall be posted by the Election Committee at the Tribal Center and at other public places on the Nisqually Indian Reservation and given to the Tribal Council on the first business day following the election; and if a candidate received a majority of votes as certified by the Election Committee, and the Election Committee has not received a protest as provided in Section 13.03.01 below, the Tribal Council shall inaugurate the newly elected Tribal Council, Fish Commission or electable Committee members at the beginning of the first regular Tribal Council meeting or by no later than thirty (30) days following the General Election.

## **HISTORICAL AND STATUTORY NOTES**

### **ANNOTATIONS**

In Iyall v. Sanchez, Ci 06-05-009 (2006), the Nisqually appellate court stated that three Tribal Council members could constitute a quorum for the purposes of inaugurating new council members. It did not address the issue of whether less than three members could constitute a quorum for this purpose.

### 13.03 ELECTION PROTESTS

#### 13.03.01 Election Protests

- (a) If at least ten (10) percent of all Eligible Voters sign a petition requesting a recount of the ballots in a Primary or General Election and file the petition with the Election Committee within three (3) days after the certified election results are posted in accordance with Section 13.02.15, the Election Committee shall, upon verifying the existence of that requisite number of signatures, conduct a recount within two business (2) days of that verification.
- (b) If at least ten (10) percent of all Eligible Voters sign and submit to the Election Committee within two business (2) days after the certified results of a Primary Election or General Election are posted in accordance with Section 13.02.15, a petition describing any violation of this Ordinance that materially affected the outcome of the election for any particular Tribal Council, Fish Commission or electable Committee office, the Election Committee shall, upon verifying the existence of that requisite number of signatures, then immediately appoint its Election Attorney, or if he or she is not immediately available, another outside attorney not presently or previously employed in the Nisqually Office of Tribal Attorney, to investigate the charges made in the petition and to render written findings of fact and conclusions of law to the Election Committee within ten (10) days of his or her appointment. The petition shall clearly indicate the basis for the petition, specify the particular Tribal Council, Fish Commission or electable Committee position, the Election Committee at issue, and include supporting evidence.
- (c) If the Election Attorney determines that a violation of this Ordinance materially affected the results of a Primary Election or General Election, the Election Attorney shall recommend that the Election Committee schedule a second vote for any particular office that has been challenged. The Election Committee shall meet and decide in writing whether to accept or deny any recommendation from the Election Attorney within five (5) business

days of the Election Committee's receipt of the Election Attorney's written findings of fact and conclusions of law. The Election Committee shall immediately post its decision at the Tribal Center, and provide a copy to the Tribal Council. The Election Committee's decision shall be reviewable de novo by the Nisqually Tribal Court, as outlined in Section 13.03.02 immediately below.

## **HISTORICAL AND STATUTORY NOTES**

### **ANNOTATIONS**

In Iyall v. Sanchez, Ci 06-05-009 (2006), the Tribal Court determined that the reference to three days in subsection (e) of this section refers to calendar days and not business days. This issue was not raised on appeal.

#### **13.03.02 Tribal Court Jurisdiction**

The Nisqually Tribal Court shall have exclusive jurisdiction over appeals arising from Section 13.03.01, only. Any appeal shall be filed with the Tribal Court, and by in-person delivery to the Election Committee's mailbox at the Tribal Center and certified mail to the attention of Election Committee at 4820 Nisqually Dr. SE, Olympia, Washington, 98513, within ten (10) business days of the entry of the Election Committee's decision pursuant to that Section 13.03.01(c). The Tribal Court shall conduct a de novo review of the Election Committee's decision. The appellant shall have the burden of proof. The Tribal Court shall either affirm the Election Committee's decision, or reverse the Election Committee's decision with appropriate prospective instructions to the Election Committee or Tribal Council. With the exception of such an appeal, or an action in equity to prospectively enforce this Ordinance (including on an emergency injunctive basis), Tribal Council and Election Committee offices or officers shall otherwise stand immune from any Tribal Court appeal or action.

#### **13.03.03 Time Periods and Filing Requirements**

All of the time periods established herein for filing any petition pursuant to Section 13.03.01 and Section 13.03.02 are jurisdictional and cannot be waived. Any protest or petition filings with the Election Committee shall be made, within the time periods set forth in those Sections, both by in-person delivery to the Election Committee's mailbox at the Tribal Center, and by certified mail to the attention of Election Committee, Nisqually Indian Tribe, 4820 Nisqually Dr. SE, Olympia, Washington, 98513.

#### **13.04 SEVERABILITY**

##### **13.04.01 Severability**

If any provision in this Ordinance is determined by the Nisqually Tribal Court to be invalid or illegal, such a provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.